

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING
TITLE 9 OF THE SAN JOSÉ MUNICIPAL CODE TO AMEND
SECTION 9.10.820 OF CHAPTER 9.10 AND TO ADD A NEW
CHAPTER 9.11 TO SET FORTH REQUIREMENTS
REGARDING WOOD BURNING APPLIANCES AND
PROHIBITED FUELS**

WHEREAS, the State Air Resources Board (ARB) adopted a particulate matter (PM10) Ambient Air Quality Standard (AAQS) in December, 1982, and levels for the PM10 AAQS were selected pursuant to California Code of Regulations Title 17 Section 70200 to protect the health of people who are sensitive to exposure to fine particles; and

WHEREAS, research indicates that woodsmoke is a significant contributor to PM10 levels that pose significant health risks; and

WHEREAS, the City of San Jose desires to lessen the risk to life and property from air pollution from woodburning appliances; and

WHEREAS, the City of San Jose finds that the proposed regulation will significantly reduce the increase in particulate emissions from future installation and construction activities; and

WHEREAS, the City of San Jose finds a need exists to adopt regulations which apply to woodburning combustion emissions;

WHEREAS, this Ordinance was found to be categorically exempt from environmental review, per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended, and Section 21.08.500 of the San Jose Municipal Code, on November 24, 1999 under File No. PP 99 - 11 -179.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

SECTION 1. Section 9.10.820 of Chapter 9.10 of Title 9 of the San Jose Municipal Code is hereby amended to read as follows:

9.10.820 Burning Solid Waste -- Limitations -- Specifications

No person shall burn any solid waste within the limits of the City except in accordance with and subject to the following limitations and conditions:

- A. No person shall burn any garbage, or any rubbish that originates from any industrial or commercial establishment or any hospital, clinic, medical or dental office or medical

laboratory, except in by the Chief of the Bureau of Fire Prevention of the Fire Department in accordance with Chapter 17.12 of this Code.

- B. No person shall create or cause the emission of noxious or offensive odors, dense smoke, or any private or public nuisance by burning any solid waste.
- C. No fire shall be kindled or maintained by any person within or upon any public street, way, road, alley, waterway, or other public property or place, except by a member of the Fire Department acting under the direction of the Fire Chief or a designee of the Fire Chief.
- D. No person shall burn any solid waste within or upon any premises except for the burning of fuel in woodburning appliances which is not prohibited under Section 9.11.310 of this Code.
- E. Notwithstanding any other provision of this Section, the Chief of the Bureau of Fire Prevention of the Fire Department may issue a permit for the burning of a bonfire, or other fire in an outdoor location pursuant to Chapter 17.12 of this Code

SECTION 2. Title 9 of the San José Municipal Code is hereby amended by adding a new Chapter to be numbered, entitled and to read as follows:

CHAPTER 9.11 WOOD BURNING APPLIANCES

Part 1 General Provisions and Definitions

9.11.010 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

9.11.020 Bay Area Air Quality Management District

“Bay Area Air Quality Management District” means the air quality agency for the San Francisco Bay Area established pursuant to California Health and Safety Code Section 40200.

9.11.030 EPA

“EPA” means United States Environmental Protection Agency.

9.11.040 EPA Certified Wood Heater

“EPA Certified Wood Heater” means any wood heater that meets the standards in Title 40, Part 60, Subpart AAA, Code of Federal Regulations in effect at the time of installation and is certified and labeled pursuant to those regulations.

9.11.050 Fireplace

“Fireplace” means any permanently installed masonry or factory-built woodburning appliance, except a pellet-fueled wood heater, designed to be used with an air-to-fuel ratio greater than or equal to thirty-five (35) to one (1).

9.11.060 Gas Fireplace

“Gas Fireplace” means any device designed to burn natural gas in a manner that simulates the appearance of a woodburning fireplace.

9.11.070 Paints

“Paints” means all exterior and interior house and trim paints, enamels, varnishes, lacquers, stains, primers, sealers, undercoatings, roof coatings, wood preservatives, shellacs, and other paints or paint-like products.

9.11.080 Paint Solvents

“Paint Solvents” means all original solvents sold or used to thin paints or to clean up painting equipment.

9.11.090 Pellet-Fueled Wood Heater

“Pellet-Fueled Wood Heater” means any woodburning appliance that operates exclusively on wood pellets.

9.11.100 Solid Fuel

“Solid Fuel” means wood or any other non-gaseous or non-liquid fuel.

9.11.110 Treated Wood

“Treated Wood” means wood of any species that has been chemically impregnated, painted or similarly modified to improve resistance to insects or weathering.

9.11.120 Waste Petroleum Products

“Waste Petroleum Products” means any petroleum product other than gaseous fuels that has been refined from crude oil, and has been used, and as a result of use, has been contaminated with physical or chemical impurities.

9.11.130 Woodburning Appliance

“Woodburning Appliance” means fireplace, wood heater, or pellet-fired wood heater or any similar device burning any solid fuel used for aesthetic or space-heating purposes.

Part 2 General Provisions

9.11.200 Residential Installations

All woodburning appliances installed in new residential units or woodburning appliances being added to or replacing woodburning appliances in existing residential units shall comply with this Chapter.

9.11.210 Commercial Installations

All woodburning appliances installed in new commercial buildings or woodburning appliances being added to or replacing woodburning appliance in existing commercial buildings shall comply with this Chapter. Commercial buildings shall include, but not be limited to, hotels and restaurants.

9.11.220 Gas Fireplaces

Gas fireplaces shall be exempt from this Chapter. However, the conversion of a gas fireplace to burn wood shall constitute the installation of a woodburning appliance and shall be subject to the requirements of the Chapter.

9.11.230 Additions, Alterations or Repairs

A woodburning appliance shall comply with this Chapter, if:

- A. The appliance is reconstructed,
- B. Any of the following type work is done the cost of which exceeds One Thousand Five Hundred Sixty Five Dollars (\$1,565):
 - 1. Additions, alterations, or repairs to the appliance;
 - 2. Remodel or renovation work which requires opening up walls within twelve inches of the appliance.

- C. The amount set forth in Subsection B shall be adjusted by the Building Official on an annual basis according to the increase in Consumer Price Index.

Part 3 Prohibitions

9.11.300 Unauthorized Appliances Prohibited

No person shall install a woodburning appliance that is not one of the following:

- A. a pellet-fueled wood heater, or,
- B. an EPA certified wood heater.

9.11.310 Prohibited Fuels

The following fuels are prohibited from use in a woodburning appliance:

- A. All materials prohibited in Section 9.10.820 of this Code, including but not limited to treated wood, plastic products, rubber products, glossy or colored papers and particle board;
- B. Any solid, semi-solid and liquid wastes generated from residential, commercial and industrial sources, including trash, refuse, rubbish, industrial wastes, asphaltic products, manure, vegetable or animal solids and semi-solid wastes, or other discarded solid and semi-solid wastes;
- C. Waste Petroleum Products;
- D. Paints or Paint Solvents;
- E. Coal;
- F. Salt water driftwood.

9.11.320 Certification

Any person who plans to install a woodburning appliance must submit documentation to the Building Official demonstrating that the appliance is a pellet-fueled wood heater, or an EPA certified wood heater.

PASSED FOR PUBLICATION OF TITLE this_____day of_____, 2000
by the following vote:

AYES:

NOES:

ABSENT:

RON GONZALES
Mayor

ATTEST:

PATRICIA L. O' HEARN
City Clerk